OCT 5 1954
HAROLD B. WILLEY, CL

Supreme Court of the United States

OCTOBER TERM—1954

No. 352

HEARST CONSOLIDATED PUBLICATIONS, INC.,

Petitioner,

—against—

ROBERT R. STEVENSON,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I

Proceedings and Opinions Below

On April 10, 1953, judgment for $75,000 on a jury verdict in this libel action was entered in the United States District Court for the Southern District of New York in favor of respondent against petitioner.

Petitioner moved for a new trial and, on May 29, 1953, that motion was denied. The opinion of the District Court denying that motion appears in the record (R. 445-446*).

The judgment was affirmed by a unanimous opinion of the United States Court of Appeals for the Second Circuit on July 27, 1954. The opinion of that court is as yet

* All references to the record are to page numbers in the Appendix to Appellant's brief in the Court below which has been filed as part of the record here.

unreported but it is printed in the Appendix to the Petition herein.

II

Jurisdiction

The jurisdiction of this Court is invoked under Title 28 United States Code 1254 (1).

III

Question Presented for Review

The sole question presented is this: After the Court below reviewed the action of the District Court in denying petitioner's motion for a new trial and found that the District Court proceeded under no misapprehension of law as to the wide discretion confided in it and made no mistake of law in denying said motion, was the Court below required to examine the amount of the verdict on petitioner's contention that it was too large?

IV

The Case

This is a libel action brought against the publisher of the "New York Journal-American" (R. 4-11). Respondent, plaintiff below, had been with General Foods Corporation for more than 20 years and was its Treasurer at a salary of $19,000 per annum (R. 39, 62). In August, 1948, petitioner published a sensational article stating that respondent's wife had that day accused him of deserting her, of living in adultery with one of his secretaries, and of having an adulterous affair with another employee (Pl. Ex. 1; R. 5, 12, 38). That the article was false never has been denied (R. 12-16).

Respondent, alleging that he lost his $19,000 position, together with valuable pension rights, as a result of the article, asked special damages as well as general and punitive damages (R. 4-11). The jury found special damages in the amount of $24,000, general damages in the amount of $1,000, and punitive damages in the amount of $50,000 (R. 394).

The verdict for special damages was supported by testimony of officers of General Foods Corporation who had read the article and had come to the conclusion that respondent's reputation had been injured to such an extent that he could no longer serve the interests of the company and that they had to request his resignation (Pl. Exs. 2 & 3; R. 44, 50, 168, 173-174, 178, 188-189, 203-204, 230, 251, 397-401). The amount of the special damages was supported by testimony that respondent, who was 42 years old and drawing a $19,000 salary as Treasurer with a prospective annual pension of $9,671, had thereafter taken another position at a salary of $10,000, the only position he could obtain after his discharge (R. 66, 69-70), and testimony of an actuary who, taking into consideration bonuses received in addition to that latter salary as well as pension rights in that new position, computed his prospective loss of earnings and pension rights to be in excess of $85,000 (R. 298-311).

The Court below reviewed the evidence supporting special damages and held that "• • • there was abundant evidence from which the jury could properly find that plaintiff's discharge was a foreseeable consequence of the defamation" (Appendix to Petition, p. 4). The Court below also observed, in upholding the admissibility of the testimony of the actuary, that the jury "• • • liberally discounted the figures of the actuary apparently to reflect the uncertainties of the future • • •" (Appendix to Petition, p. 7.)

In support of punitive damages, and showing malice, was evidence that the article was a report of an affidavit of respondent's wife filed by her in Supreme Court, New York, in support of a motion for temporary alimony, which petitioner's reporter had examined by invading a confidential file in violation of the rule of the court barring public inspection of matrimonial files* (Pl. Ex. 1; Def. Ex. A; R. 38, 88, 262-267, 274-279).

Also in support of punitive damages, and showing further malice, was evidence that the article was an untrue and an unfair report of the wife's affidavit in that it portrayed the wife as making those accusations that very day in court when petitioner knew that she had withdrawn her motion five days before and that it had never been considered on the merits (R. 271). And the affidavit itself revealed that it did not say, as did the article, that he was living in adultery with one of his secretaries but said, rather, that he was living in the home of the parents of a woman who, in fact, was not one of his secretaries at all (Pl. Ex. 1; Def. Ex. A; R. 38, 88).

The Court below, reviewing the order denying a new trial, ruled in respect to punitive damages that it was the law of New York that there was no necessary and definite mathematical relationship between compensatory and punitive damages (Appendix to Petition, p. 12).

The review of the Court below of the order denying a new trial embraced not only the punitive damages but the special damages as well. The Court said:

> "Thus we find in the record nothing whatever to suggest that the judge, in the exercise of the wide discretion confided to him, acted under any misapprehension as to the law. And we have no basis for dis-

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* Rule 278 of the New York Rules of Civil Practice.

regarding the admonition of *Fairmount Glass Works* v. *Coal Co.*, supra, p. 485, that 'Appellate courts should be slow to impute to juries a disregard of their duties, and to trial courts a want of diligence or perspicacity in appraising the jury's conduct'" (Appendix to Petition, p. 12).

V

Reasons for Denying Certiorari

As just noted, the Court below did exhaustively review the refusal of the trial judge to set aside the verdict. The search was for errors of law but, in fact, all it failed to encompass was a comparison of its own estimate of the damages with the appraisal of the jury. That, however, is the very area of review which would encroach upon the exclusive province of the jury in violation of the admonition of this Court in *Fairmount Glass Works* v. *Coal Co.*, 287 U. S. 474.

Furthermore, petitioner's position that the damages are excessive appears to be without merit. The verdict was based on solid evidence, painstakingly reviewed by the Court below, that petitioner wantonly and maliciously destroyed an outstanding career, brought about the loss of a $19,000 salary, and permanently impaired a reputation.

Petitioner refers to *Affolder* v. *New York, Chicago & St. Louis R.R. Co.*, 339 U. S. 96, where this Court observed:

> "We agree with the Court of Appeals that the amount of damages awarded by the District Court's judgment is not *monstrous* in the circumstances of this case" (p. 101). (Italics ours.)

We do not see colorable argument that the verdict here is "monstrous," and there appears to be no basis for ask-

ing that this case be remanded for the purpose of further review on that premise.

Petitioner seeks to bring this case under the purview of Rule 19 by arguing that there is a conflict between this case and the following:

Virginian Ry. Co. v. *Armentrout*, 4 Cir., 166 F. 2d 400;
Southern Pac. Co. v. *Guthrie*, 9 Cir., 180 F. 2d 295, rehearing 186 F. 2d 926;
Trowbridge v. *Abrasive Co.*, 3 Cir., 190 F. 2d 825;
Bucher v. *Krause*, 7 Cir., 200 F. 2d 576, certiorari denied 345 U. S. 997, rehearing denied 346 U. S. 842.

Actually, none of those cases is in conflict with this.

Virginian Ry. Co. v. *Armentrout, supra,* involved a $160,000 verdict to a disabled child to cover future loss of wages. The appellate court found that the amount was so huge that interest on it alone, without ever touching principal, would be greatly in excess of future earnings of the plaintiff as estimated by the trial judge. The court, recognizing the rule that there can be no reversal for error of fact, stated it did not "understand the rule to have application, however, in those exceptional circumstances where the verdict is so manifestly without support in the evidence that failure to set it aside amounts to an abuse of discretion" and that "in a situation of that sort, reversal is no more based on 'error of fact' than reversal for refusal to direct a verdict for insufficiency of evidence" (p. 408). Holding that there had been an abuse of discretion in that case,* the court merely dealt

* That was not the only ground for reversal. The court found the charge to be prejudicial.

with a borderline circumstance difficult to classify as error of law or error of fact. The error there resulted from a patent mathematical miscalculation giving rise to an unsupportable verdict comparable to the exceptions mentioned in *Fairmount Glass Works* v. *Coal Co., supra,* at pages 483-484, such as damages in clear contravention of the instructions of the trial court. No such circumstance is present in the instant case and the Court below consequently did not deal with any problem even remotely similar. Indeed, as to special damages the exact opposite is true. The Court below observed that the jury "* * * liberally *discounted* the figures of the actuary * * *" called by respondent (Appendix to Petition, p. 7). (Italics ours.) And as to punitive damages the Court expressly ruled that there is no necessary mathematical relationship between compensatory and punitive damages (Appendix to Petition, p. 12). Thus there is no conflict between *Virginian Ry. Co.* v. *Armentrout, supra,* and the instant case for the clear reason that the former turned on a point wholly absent from the latter.

In *Southern Pac. Co.* v. *Guthrie, supra,* a $100,000 judgment for disabling injuries to a 58 year old locomotive engineer was left undisturbed. In affirming, the court said that "we cannot here reverse the action of the trial court unless the verdict can be said to be 'grossly excessive' or as stated in the *Affolder* case, 'monstrous'" and that the $100,000 verdict was neither (on rehearing at 186 F. 2d 926, 933). And in *Trowbridge* v. *Abrasive Co. of Philadelphia, supra,* the court refused to disturb a $126,000 judgment to a 44 year old disabled workman saying:

> "We need not decide, however, whether the verdict is excessive, for this court will not substitute its judgment for that of the jury or the trial court. The question of excessiveness of a verdict is primarily

> one for the trial court; where, however, the verdict is grossly excessive, the denial by the trial court of a motion for a new trial constitutes such an abuse of discretion that this court will remand for a new trial * * *" (at p. 830).

There is no conflict between either of those cases and the instant case. We cannot discover any valid basis at all for any assertion that $24,000 is either "grossly excessive" or "monstrous" compensation for the loss of a $19,000 position nearly five years before trial or that punitive damages of only twice the amount can be so characterized. After all, the injury inflicted here was wantonly and maliciously done. Petitioner engaged in near if not actual criminal means to get its story; it ignored the most elementary concept of fairness by reporting that charges were being made that day when it knew they had been withdrawn nearly a week before; and it falsely quoted a filed document as charging that a responsible business man was living in adultery with one of his secretaries when it did not so charge.

The remaining case cited by petitioner as conflicting is *Bucher* v. *Krause, supra,* where the court affirmed a $100,000 award for false arrest, false imprisonment, and assault. Judge Hincks, in the opinion below, points out the lack of conflict and observes that the review there, as here, essentially was a review for errors of law (Appendix to Petition, pp. 13-14).

Petitioner states at page 19 of its petition that the Court below refused to consider whether the evidence adduced could legally justify an award of $24,000 special damages. We believe petitioner is clearly mistaken. As noted above, the Court below expressly ruled that "* * * there was abundant evidence from which the jury could properly

find that plaintiff's discharge was a foreseeable consequence of the defamation" (Appendix to Petition, p. 4) and in ruling that the testimony of the actuary was properly received, observed that the jury "* * * liberally discounted the figures of the actuary * * *" (Appendix to Petition, p. 7). Likewise, petitioner states at page 19 of its petition that the Court below refused to consider whether punitive damages could "on any theory of the case" justify the amount of the award. We believe that also is a mistaken conclusion since the Court below expressly ruled that there is no necessary and definite mathematical relationship between punitive and compensatory damages (Appendix to Petition, p. 12).

Respondent respectfully submits that petitioner's application is without merit.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: New York, N. Y.
October 1, 1954.

Respectfully submitted,

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Proof of Service

I, Frank H. Gordon, one of the attorneys for Robert R. Stevenson, respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on October 1, 1954, I served a copy of the foregoing brief on Hearst Consolidated Publications, Inc., petitioner herein, by mailing a copy, in a duly addressed envelope, with first class postage prepaid, to its attorney of record as follows:

To: William J. Dempsey, Esq.,
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Dated: New York, N. Y.
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